



ABU DHABI GLOBAL MARKET
سوق أبوظبي العالمي

CONSULTATION PAPER NO. 5 OF 2017

13 NOVEMBER 2017

**PROPOSED AMENDMENTS TO ADGM
CAPITAL MARKETS REGULATIONS AND
RULES**

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INTRODUCTION

WHY ARE WE ISSUING THIS PAPER?

1. The Abu Dhabi Global Market ("**ADGM**") together with the Financial Services Regulatory Authority ("**FSRA**") have issued this Consultation Paper to invite public feedback and comments on proposed amendments to ADGM regulations and specific FSRA rulebooks.
2. We would like to invite comments on the proposal to make various amendments to the ADGM's regulations and FSRA Rules, including:
 - a. Amendments to the Financial Services and Markets Regulations 2015 ('**FSMR**') and the Market Infrastructure Rules ('**MIR**') enabling members outside of the ADGM (Remote Members) to access exchanges and clearing houses located within the ADGM;
 - b. Amendments to FSMR and MIR which eliminate transaction reporting requirements currently imposed upon Authorised Persons when they trade upon an ADGM exchange or Multilateral Trading Facility;
 - c. Amendments to FSMR and the Market Rules ('**MKT**') to limit the conduct of Price Stabilisation measures to appointed stabilisation managers and their respective agents and to create a more robust set of rules and principles concerning the conduct of Price Stabilisation activities;
 - d. Amendments to terms defined in FSMR and the Glossary ('**GLO**') to clarify those requirements applicable to non-ADGM based exchanges and clearing houses (Remote Bodies) which seek a Recognition Order; and
 - e. Various technical amendments to FSMR and FSRA rulebooks described in Schedule A to this Consultation Paper.
3. Unless otherwise defined, capitalised terms referred to in this paper have the meanings attributed to such terms as contained in FSMR or GLO.

WHO SHOULD READ THIS PAPER?

4. This Consultation Paper may be of interest to a number of parties, including:
 - a. Persons within the ADGM holding or seeking a Recognition Order from the FSRA (as an exchange and/or clearing house);
 - b. Exchanges or clearing houses outside of the ADGM which may seek, or hold, a Recognition Order;
 - c. Persons who may be considering offering, trading or clearing securities within or from the ADGM regardless of their location; and
 - d. Persons seeking to make an Offer of Securities to the Public within ADGM and/or seek admission to the Official List of Securities administered by the FSRA.

HOW TO PROVIDE COMMENTS

5. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use the Consultation Paper number in the subject line. If relevant, please identify the organisation you represent when providing your comments. The FSRA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making any comments. Comments supported by reasoning and evidence will be given more weight by the FSRA.

WHAT HAPPENS NEXT?

6. The deadline for providing comments on this proposal is **2 January 2018**. Once we receive your comments, we will consider whether any modifications are required to the proposed amendments to the ADGM's legislative framework. The Board and the FSRA will then proceed to enact the proposed legislative framework. You should not act on this proposal until the relevant regulations, rules or guidance are issued. We will issue a notice on our website when this happens.

COMMENTS TO BE ADDRESSED TO:

Consultation Paper No. 5 of 2017
Financial Services Regulatory Authority
Abu Dhabi Global Market Square
Al Maryah Island
PO Box 111999
Abu Dhabi, UAE
Email: consultation@adgm.com

STRUCTURE OF THIS PAPER

7. The amendments under consideration are summarised in this paper, which are organised as follows:
 - a. Schedule A – Table summarising technical amendments of a policy nature;
 - b. Annex A – Draft amendments to **FSMR**;
 - i. Appendix 1 - Draft amendments to **MIR**;
 - ii. Appendix 2 - Draft amendments to **MKT**;
 - iii. Appendix 3 - Draft amendments to **GLO**;
 - iv. Appendix 4 - Draft amendments to the Rules of Market Conduct (**RMC**);
 - v. Appendix 5 – Draft amendments to the Conduct of Business Rules (**COBS**);
 - vi. Appendix 6 - Draft amendments to the General Rulebook (**GEN**);
 - vii. Appendix 7 - Draft amendments to the Fees Rules (**FEES**);
 - viii. Appendix 8 - Draft amendments to the Islamic Finance Rules (**IFR**).

BACKGROUND

1. In the course of discussions with various potential applicants seeking Recognition Orders, or entities proposing to conduct offers and/or listings of securities in ADGM, the FSRA has identified a number of potential amendments to the ADGM's capital markets regime which would further improve the risk proportionate approach to regulating capital markets activities in and from the ADGM while serving to raise market awareness of, and trading interest in the ADGM.
2. These proposed amendments include enabling Remote Members to access Recognised Bodies located within the ADGM, reducing the regulatory burden upon Authorised Persons and Remote Members which trade through such Recognised Bodies as well as various miscellaneous amendments to both FSMR and the FSRA's Rules. In addition, the FSRA has taken this opportunity to make some necessary technical amendments that we have identified since commencing operations in October 2015.
3. Collectively, it is intended that these proposals bring the ADGM markets regime into line with the current practice of other leading international markets, while at the same time avoiding much of the unnecessary complexity of larger, established markets where Securities trading is fragmented across exchanges and/or jurisdictions.

ITEM 1 – REMOTE MEMBERS REGIME

4. While the ADGM's current capital markets regime limits membership of an ADGM based exchange or clearing house to Authorised Persons, it was envisioned that a Remote Member regime would be introduced at a suitable time. The FSRA is of the opinion that the continued retention of this restriction would distinguish the ADGM regime from other jurisdictions in the post-MiFID world, wherein cross-border membership of an exchange is becoming commonplace.
5. Access to a greater potential pool of potential members, via a Remote Member framework, would raise market awareness of, and trading interest in, Recognised Bodies which choose to locate in the ADGM and permit greater market efficiency. A Remote Member framework will also permit

direct relationships between international participants and ADGM Recognised Bodies.

6. It is not proposed that a Remote Member be able to trade on behalf of clients located within the ADGM; the ability to trade on behalf of ADGM clients will still be restricted to Authorised Persons with an ADGM presence, except in cases where the Remote Member was a SCA regulated broker. This is consistent with the General Prohibition contained in Section 16 of FSMR.
7. To be considered 'qualified', a potential Remote Member will be required to meet Remote Member Requirements (see new MIR Rule 8.2.1) as well as comply with the business/operating rules of the Recognised Body it wishes to access (MIR 2.8). The FSRA would be responsible for determining that applicants satisfy the Remote Member Requirements contained in the proposed new Chapter 8 of MIR. Recognised Bodies will continue to be responsible for determining an applicant Remote Member's compliance with its business/operating rules. Given the potential benefits of increasing the pool of members, the FSRA has determined that no application fees for Remote Members would be warranted.

ISSUES FOR CONSIDERATION

Q1: ARE THE REMOTE MEMBER REQUIREMENTS SUITABLY CALIBRATED (IN TERMS OF MARKET DEVELOPMENT AND MARKET PROTECTION)?

ITEM 2 – ELIMINATION OF DUPLICATE TRANSACTION REPORTING REQUIREMENTS

8. Currently, FSMR subsections 149(1) and (2) obligate Authorised Persons to report transactions in Financial Instruments which have been admitted to trading upon a Recognised Investment Exchange (RIE) or Multilateral Trading Facility (MTF), no later than the following business day. In parallel, FSMR section 149(3) compels the operator of a Recognised Investment Exchange or MTF to report details of transactions executed upon its platform, to the extent that such transactions are not obliged to be

reported by the Authorised Person in accordance with subsections (1) and (2). This potential duplication of reporting obligations is a feature of E.U. legislation which must facilitate the monitoring of highly fragmented trading activity across multiple markets, an attribute which is not shared by the ADGM.

9. Additionally, future trading by Remote Members which are not Authorised Persons will limit the effectiveness of FSMR subsections 149(1) and (2) as Remote Members will not operate under the direct supervision of the FSRA and will thus be exempted from the reporting requirement. To enable the FSRA to adequately monitor trading activities, it will be necessary to rely upon transaction reporting by the RIE or MTF, in lieu of compelling members to report transactions on a timely basis. Information gathering and direction powers of the FSRA pursuant to FSMR would remain otherwise unchanged, thereby continuing to permit the FSRA to investigate allegations of Market Abuse by requesting specified information from any member.
10. The FSRA proposes to eliminate the reporting requirement for Authorised Persons contained in FSMR subsections 149(1) and (2) and expand the reporting requirements imposed upon RIEs and MTFs contained in subsection 149(3) to include all transactions executed upon or otherwise reported to the RIE or MTF. In addition, MIR Rule 3.5.1 would be expanded to require RIEs and MTF's to provide a continuous feed of trading data to the FSRA, alongside the existing requirement to provide a continuous data feed to the public, consistent with the operation within a number of other international regimes.

ISSUES FOR CONSIDERATION

Q2: IS THE ELIMINATION OF REPORTING REQUIREMENTS FOR AUTHORISED PERSONS APPROPRIATE?

ITEM 3 – PRICE STABILISATION

11. Currently, Part 8 of FSMR exempts Price Stabilisation, amongst other activities, from being considered Market Abuse, if such behaviour conforms to certain requirements found in the Price Stabilising Rules contained in Chapter 6 of MKT. In order to address potential gaps in the Market Abuse regime permitted by Price Stabilisation, it is proposed that the FSRA limit which parties may engage in such conduct, and add greater transparency to the process while remaining consistent with other international regimes which permit price stabilisation.
12. The proposed amendments to MKT Rules 6.2.7 – 6.2.18 restrict eligibility for the Price Stabilisation exemption contained in FSMR to a Stabilisation Manager (typically the lead underwriter) and any Stabilisation Agents appointed by the Stabilisation Manager. Availability of the exemption will be predicated upon (i) prior notice of such appointment from the Issuer or Reporting Entity to the FSRA, (ii) formal submission of the Stabilisation Manager to the jurisdiction of the ADGM Court, and (iii) notification of such appointment by the Stabilisation Manager to all exchanges upon which the Relevant Security is traded.
13. Further, the FSRA proposes that disclosure and reporting requirements concerning stabilisation activities will become the responsibility of the Stabilisation Manager, who will act as the central point of inquiry, responsible for providing information concerning each stabilisation transaction and any other relevant information the FSRA may request. A proposed new MKT Rule 6.2.16 will require the Stabilisation Manager to maintain a current register, available for inspection by the FSRA upon short notice, describing all interactions with its appointed Stabilisation Agents during the term of the Stabilisation Window. A summary of all stabilisation activities undertaken by the Stabilisation Manager during the Stabilisation Window will be required no later than seven days following the end of such period.
14. In order to prevent the possible development of a pre-stabilisation window ‘grey market’, it is proposed that the permitted maximum thirty day window during which stabilisation may occur commence at the date of

admission to trading on the relevant exchange. This will replace the current mechanism which triggers the commencement of the thirty day Stabilisation Window upon delivery of 'adequate public disclosure of the final price of the Relevant Securities', as currently reflected in MKT 6.2.8.

15. The FSRA is proposing that a new MKT Rule 6.2.11 be included which prescribes what Stabilisation Managers and Stabilisation Agents may do as part of their stabilisation activities. Specifically, they may purchase, or agree to purchase, Securities; or offer or agree to act with a view to stabilise the market price of a Security. Stabilisation Managers will be prohibited from engaging, or having their Stabilisation Agents engage in, stabilisation activities where the Stabilisation Manager knows, or should reasonably have known, that such conduct will result in, for example, contravention of the rules and requirements of the relevant exchange.
16. As a by-product of the proposal to create a Stabilisation Manager / Agent regime, the FSRA believes abuse of the exemption may be avoided by prohibiting transactions undertaken by the Stabilisation Manager as principal and its appointed Stabilisation Agents. It is proposed that this prohibition not apply in circumstances where neither party could have reasonably known that the counterparty to the transaction was the other party, or where the sole purpose of the transaction was the reallocation of risk and the transaction was priced accordingly.
17. The FSRA can foresee that a dual-listed Security may result in a potential conflict between the FSRA's Price Stabilisation Rules and the price stabilisation rules of another jurisdiction. While the requirement to comply with Chapter 6 of MKT would remain, it is proposed to permit the Issuer and any Stabilisation Manager to apply to obtain the consent of the FSRA to adhere to the laws of the other listing jurisdiction. Such FSRA consent would only be available where the second, non-ADGM jurisdiction is a Zone 1 jurisdiction and the FSRA is satisfied that all price stabilisation activities will be undertaken in compliance with the laws of such Zone 1 jurisdiction. The FSRA will reserve the right to impose further conditions upon its consent as it may consider appropriate or necessary.

18. The proposed amendments seek to provide greater clarity in relation to the use of Price Stabilisation, ensuring that Issuers, Reporting Entities and Stabilisation Managers operate under clear guidance, which will assist to prevent abuse of Price Stabilisation.

ISSUES FOR CONSIDERATION

Q3: WILL THE ADOPTION OF A MORE STRUCTURED PRICE STABILISATION REGIME APPROPRIATELY LIMIT ACTIVITY TO THOSE PERSONS WHO SHOULD ENGAGE IN SUCH ACTIVITY?

Q4: HAVE THE ADDITIONAL TRANSPARENCY PROCESSES AND REQUIREMENTS BEEN APPROPRIATELY SET?

ITEM 4 – NON-ADGM ‘REMOTE’ BODIES (TERMINOLOGY CHANGE)

19. FSMR currently defines a Recognised Body as either a Recognised Clearing House or a Recognised Investment Exchange, either of which holds a Recognition Order granted pursuant to Part 12 of FSMR. Part 12 of FSMR enables the FSRA to grant a Recognition Order to exchanges and clearing houses which are either located within or outside the ADGM (the latter being defined as “Non-ADGM Recognised Bodies”, being either “Non-ADGM Recognised Exchanges” or “Non-ADGM Recognised Clearing Houses”).
20. The broad use of the term ‘Recognised Body’ results in the generic application of regulatory requirements to both ADGM-based and non ADGM-based clearing houses and exchanges, which may prove onerous for the latter group. The ability to distinguish Recognised Bodies from Remote Bodies (see paragraph 20 below), coupled with applying only those requirements intended to apply to the latter group in Chapter 7 of MIR, provides additional clarity to both FSMR and MIR.
21. It is proposed that the defined terms ‘Recognised Body’, ‘Recognised Investment Exchange’ and ‘Recognised Clearing House’ be restricted to ADGM-based institutions. The terms ‘Remote Body’, ‘Remote Investment Exchange’ and ‘Remote Clearing House’ will be employed in lieu of the existing ‘Non-ADGM Recognised’ prefix versions of these defined terms.

22. All qualifying institutions, regardless of where they operate, will continue to hold a ‘Recognition Order’ pursuant to part 12 of FSMR; a new term ‘Remote Recognition Requirements’ will capture the requirements contained in FSMR and Chapter 7 of MIR which apply to Applicants seeking to become a Remote Body.
23. The clear distinction between ‘Recognised Bodies’ and ‘Remote Bodies’ will reduce the potential for confusion for users of FSMR and MIR, and reflects the intent created in the distinct treatment of Remote Bodies in Chapter 7 of MIR. Importantly, a number of amendments to FSMR and MIR are proposed which acknowledge that Remote Bodies are regulated in their home jurisdictions, therefore certain FSRA requirements created for domestic institutions may be inappropriate. Specifically, as the application of insolvency law relies upon the jurisdiction of the debtor, certain provisions which modify the application of the Insolvency Regulations 2015 or permit the Default Rules of an exchange or clearing house to be given preference over the application of the ADGM’s Insolvency Regulations will not have application to a Remote Body.

ISSUES FOR CONSIDERATION

Q5: DO YOU AGREE WITH PROPOSED NEW DISTINCTION BEING MADE BETWEEN RECOGNISED BODIES AND REMOTE BODIES?

ITEM 5 – OTHER PROPOSED POLICY AMENDMENTS

24. In addition to the proposed amendments outlined above, the FSRA is considering a number of smaller technical amendments which reflect various potential policy changes. Summaries of such amendments have been organised by source and section number in a table attached as Schedule A to this consultation paper.

ISSUES FOR CONSIDERATION

Q6: DO YOU HAVE ANY CONCERNS ABOUT ANY OF THESE PROPOSALS? IF SO, WHAT ARE THESE CONCERNS AND HOW SHOULD THEY BE ADDRESSED?